July 11, 1963

STATEMENT OF CARL VINSON, CHAIRMAN, HOUSE ARMED SERVICES COMMITTEE, BEFORE HOUSE POST OFFICE AND CIVIL SERVICE COMMITTEE ON H. R. 7381 - TO SIMPLIFY, MODERNIZE, AND CONSOLIDATE THE LAWS RELATING TO THE EMPLOYMENT OF CIVILIANS IN MORE THAN ONE POSITION AND THE LAWS CONCERNING THE CIVILIAN EMPLOYMENT OF RETIRED MEMBERS OF THE UNIFORMED SERVICES, AND FOR OTHER PURPOSES.

Mr. Chairman:

I appreciate the opportunity to appear before your Committee in connection with the bill H. R. 7381, which will simplify the dual employment and dual compensation laws.

I am sure we can all agree that the present statutes which impose restrictions on the employment of retired members of the uniformed services are confusing, discriminatory, and very complex.

But more important, they are undoubtedly denying to the government the special skills of many persons that are needed in our defense efforts.

The Dual Employment Act of 1894 which precludes the employment of retired regular officers should be repealed outright. I am pleased to see that H. R. 7381 does this.

Perhaps there was justification for this law in the 19th Century, but with the changes that are recommended in the bill before you, I can see no reason to continue this flat prohibition against the employment of healthy retired regular officers of the uniformed services.

The Dual Compensation Act of 1932 raises more complex problems because of the $10,000 limitation on the receipt of retired pay and the pay of the federal position. This law is restrictive, but even more important, it is subject to many interpretations that add to the confusion.

I will not repeat here the decisions of the Comptroller General with respect to the non-regular warrant officers who are now and have been employed by the federal government and who suddenly find themselves faced not only with dismissal but claims from the government for back pay on the theory that the 1894 Dual Employment Statute prohibits their employment by the federal government.

Likewise, I will not repeat the decision of the Comptroller General which was rendered last year concerning the application of the Dual Compensation Act of 1932 to retired reserve officers who were retired for disability in a temporary grade that was held to be outside the protection of the 1947 law which made inapplicable the restrictions on the employment of retired reserve officers.

As you know, the Committee on Armed Services has a bill, H. R. 6304, which would exempt one group of retired warrant officers from the 1894 Dual Employment Statute, and another group of retired reserve officers from the 1932 Dual Compensation Act. I am particularly concerned with these two groups of retired non-regular officers and warrant officers who have been affected by these recent Comptroller General decisions who would be relieved of that liability as a result of the enactment of H. R. 6304.

However, a remedy is afforded to these officers in Sections 102(f) and (g) of the bill now before you.

I am hopeful, of course, that this Committee will adopt these two provisions and make it unnecessary for the Committee on Armed Services to conduct hearings and report H. R. 6304.

However, I feel that I must remind this Committee that the Comptroller General has only granted a "stay of execution" with regard to

one of these two groups of officers until the end of this session of the Congress.

On May 2, 1963, I wrote to the Comptroller General concerning the decision affecting non-regular warrant officers and asked him to refrain from taking further action with regard to the non-regular warrant officers until such time as the Congress had had a reasonable period of time to consider legislation "that might eventually establish a firm policy with regard to the status of all retired personnel -- regular, temporary, reserve, AUS, permanent, disability, or otherwise."

The Comptroller General, in his reply of May 17, 1963, assured me that he would take no action immediately, but he also said --

> "We think you will agree that if legislation making the dual office act inapplicable to these temporary warrant officers is not enacted during this first session of the 88th Congress, it will be incumbent upon all departments and agencies employing them in civilian positions within the scope of that act to terminate their civilian employments at or about the time such session ends."

Thus, retired non-regular warrant officers face the serious problem of losing their federal positions unless remedial legislation is enacted during this first session of the 88th Congress.

I hope it will not become necessary to pass special legislation for this group of non-regular warrant officers as well as the reserve officers who are affected by the application of the Dual Compensation Act to their situations in order to meet the deadline set by the Comptroller General.

I do not propose to discuss the details of the bill before you today, but I would like to suggest two points in your consideration of this measure which you might wish to change.

Frankly, I do not understand the reasoning behind the proposed formula that would permit a retired member of a uniformed service to receive the full salary of any civilian office he holds but during the time he is receiving this salary, restrict his retired pay to the first $2,000 plus one-half of the remainder of his retired pay.

This, of course, will make many enlisted personnel who retire in the future subject to these restrictions -- a restriction that has not previously been imposed upon them.

May I suggest as an alternative that you impose a flat dollar limitation on the amount of retired pay and salary that a retired member might receive while he is working for the federal government.

Today the restriction is $10,000 on the combination of retired pay and the federal salary, but as I understand it, retired pay can be waived and the full federal salary can be received.

Perhaps a restriction of $20,000 per annum on the combination of the two would accomplish what we seek -- namely, a restriction on the amount of income that an individual may receive based upon prior military service and present federal service. This would permit the government to employ retired enlisted and officer personnel without restriction, for practical purposes, and at the same time protect civil service employees in the higher ratings.

In other words, a retired senior officer would think twice before seeking a GS-15, 16, or 17 position if it meant the suspension of up to one-half or more of his retired pay while so employed.

I can appreciate the viewpoint of civil service employees who may be concerned that the higher paying positions may be filled with retired senior officers, thus precluding their own promotion.

But in order to safeguard civil service employees I do not think it is necessary to impose drastic restrictions on future retired enlisted personnel and many retired officers who have technical skills which can be used in the lower civil service ratings.

Finally, I would suggest to you that that portion of the bill which exempts retired military personnel with less than six years of active service from these proposed restrictions be increased to "less than eight years".

Frankly, I do not know where the "six years" came from. This provision, of course, refers to retired reservists who qualify for retirement under the Reserve Retirement Act at the age of 60.

Traditionally, we have always used eight years of active duty as the cut-off period between a career reservist and a non-career reservist.

Eight years is used in the Career Compensation Act for disability retirement purposes, and eight years is used in the Dependents Medical Care Act in order to qualify retired reservists for hospitalization benefits.

I suggest that eight years has a historical background which can be fully justified, whereas the six years has no basis whatsoever.

I will not attempt to discuss veteran's preference, or any of the other technical features of the bill.

In conclusion, let me repeat that I am concerned about the retired non-regular warrant officers -- and

I am concerned about the retired reservists who are retired for disability in a temporary grade.

Finally, I hope this Committee will make two changes in the bill -- namely, in the formula that has been suggested concerning the first $2,000 of retired pay and one-half of the remainder, and the six-year provision with regard to retired reservists under Title III of Public Law 810.

I also hope that prompt action will be taken on the entire matter.

Next 3 Page(s) In Document Exempt

A officier may hold an office if the duties are beyond and unrelated to the office he now holds, unless some specific statute applies.

10 OAG 111, 114
Converse v US (21 How. 463)

Considering such things as possible recall to duty and carrying them on commissioned list, it was held that retired public Health officers are barred from office by 5 USCA 62

36 Comp Gen 243
and B-30362

Further they are not exempt from injuries incurred in the line of duty as are military officers.

NLRB employee could work for Congressional subcommittee because committee existed only for a limited duration
Employee was on leave WOB.

31 Cong Fen 414
see also 30 id 386

Next 4 Page(s) In Document Exempt

May 5 60

Sept. 29/60 —
~~Sept 8/60~~ —
aug. 26/60 —
July 31/62
July 9/62
~~Sept 18/62~~
Feb 8/62
~~Jan 29/62~~

Bound

[redacted]

Approved For Release 2005/05/18 : CIA-RDP66B00403R000500010023-9

Dual Compensation and Dual Employment

In view of HR 7381, Part II relating to employment of persons retired from Federal service is suspended until the close of Congress. The following OGC opinions may be of use in interpreting the new law or in a study of the old law should the new law fail to pass.

62-1263	15 June 1962
63-1139(a)	23 May 1963
O/Logistics	9 October 1962
60-1434	2 November 1960
61-0969	14 June 1961
O/Logistics	21 July 1961
61-0191(a)	23 February 1961

PART II - EMPLOYMENT OF PERSONS RETIRED FROM FEDERAL SERVICE

Dual Employment (5 U.S.C.A. 62)

No one who holds an office to which a compensation of $2,500 is attached may hold or be appointed to any other office to which compensation is attached. Whether or not this prohibition of employment applies depends on the office holder's status, relationship to the Agency, and compensation.

Employees of proprietary organizations are not, in the usual case, appointed officers of the United States Government. Therefore, they hold no "office" and are not within the terms of the statute.[1] Several strong arguments can be made for this proposition.

In Dolton v. U.S.[2] a retired general was appointed as President of the Emergency Fleet Corporation. The company was formed and existed under

---

[1] In U.S. v. Maurice (2 Brock 96), Chief Justice Marshall defines "office" as a public charge or employment. Although an office is an employment, it does not follow that every employment is an office. A person may be employed under a contract express or implied to do an act or perform a service without becoming an officer. "But if a duty be a continuing one . . . it seems very difficult to distinguish such a charge or employment from an office . . . . " See also U.S. v. Hartwell (6 Wall. 385, 393)

[2] 71 C.Cls. 421 (1931)

the Corporation Laws of the District of Columbia. It was held that 5 U.S.C.A. 62 was directed holding offices created or authorized by Congress. The Emergency Fleet Corporation was found to be distinct from the United States. The purpose, according to the court, was to allow business to be carried on for, but not by, the Government. "The corporation, although the United States owned its stock, had the power and liberty of action of other corporations, including the power to employ and discharge at will all operating officials and employees."[3] The Court of Claims also suggested that unless there is an appointment by the President or the head of a department, there is no "holding of an office."

The Comptroller General has also accepted a restrictive meaning of the term "office" as used in 5 U.S.C.A. 62. Employees of "nonappropriated" fund activities such as a post exchange or officers' mess do not hold an office. The source of funds is immaterial, but activities of this nature do not have the elements of appointment, tenure, duration, and salary characteristic of an office as distinguished from a mere contract for personal services.[4]

---

[3] Ibid. at 426, citing many cases holding the Fleet to be a separate entity

[4] 36 Comp. Gen. 309. However, this same opinion states that a retired officer working for such a fund is subject to 5 U.S.C.A. 59.

The Comptroller General has also permitted a grant to a retired colonel from USIA. The grant was payable periodically to enable him to work for [illegible] cultural centers abroad, sponsored by USIA and voluntary contributions. Under such an arrangement, the colonel did not hold an office.[5]

Of course, in any instance, the employment of retired personnel should be examined closely.[6] But so long as the relationship of employment is with a proprietary entity, and

---

[5] 40 Comp. Gen. 158

[6] A mere contract relationship with the Government is not proscribed by 5 U.S.C.A. 62 (39 Comp. Gen. 62).